

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

BRETON LEE MORGAN, M.D.,

Plaintiff,

v.

CIVIL ACTION NO. 3:09-1059

KATHLEEN SEBELIUS,
Secretary of Department of Health
and Human Services,

Defendant.

ORDER

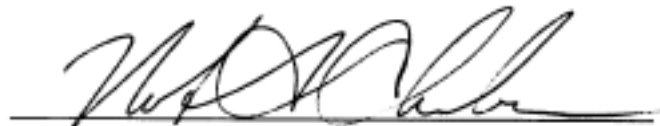
Despite being in its preliminary stages, this case already has a convoluted history. Plaintiff filed a two-page complaint asserting jurisdiction under 42 U.S.C. § 504(g) for review of a decision by the Department of Health and Human Services Appeals Board. Service, however, was not timely effectuated and the United States filed a motion to dismiss based on this procedural deficiency. In its response brief, the plaintiff explained the untimely filing and also that the assertion of jurisdiction under § 504(g) was “clearly a typographical error where the digits were transposed” and that this case was actually brought under 42 U.S.C. § 405(g). (Doc. 11). This Court denied the motion to dismiss, electing to use its discretion to extend the time for service to accommodate the plaintiff.

Following the denial of its motion to dismiss, the Court entered an Order and Notice for purposes of scheduling. The United States filed a motion to vacate that Order and refer the case to a magistrate judge for initial disposition. They argued that the Local Rules 9.1-9.9 specify a case brought under 42 U.S.C. 405(g) should be referred to a magistrate. The defendant did not dispute

that Local Rules 9.1-9.9 apply, but rather argued that the district court judge should preside over the case for reasons of efficiency. The Court denied the motion and ordered that the case be referred to the magistrate judge.

It now appears to the Court that 42 U.S.C. 405(g) may not be applicable to this case. Section 405(g) governs judicial review over a final decision of the Commissioner of Social Security. As stated in the complaint, this case seeks review of a decision of the Department of Health and Human Services Appeals Board. There is no mention in the complaint of the Commissioner of Social Security. For this reason the Court **ORDERS** the plaintiff to provide within **10 days**, justification for this Court's jurisdiction. The government will be allotted the typical response time and shall provide renewed justification for referral to the magistrate judge – if the government feels that such referral remains appropriate. The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: June 14, 2010

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE